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Supreme Court, U.S.
FILED

02 1356 JAN 13 2003

Docket No. OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2002

IN THE MATTER OF
LAWERNCE D. KENEMORE JR.
PETITIONER

V

UNITED STATES OF AMERICA
RESPONDENT

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

# PETITION FOR A WRIT OF CERTIORARI

Lawernce D. Kenemore Jr. Pro-se
26175-077 # "DALLAS"
Federal Medical Center
P.O. Box 15330
Fort Worth, Texas 76119

92 PP

## QUESTIONS PRESENTED

If 18 U.S.C. 1341 essential element, is materiality pursuant to this courts decision in Neder v. United States 527 U.S. 1 (1999)

The first question is was the Courts below decision contrary to clearly established substantive law as determined by the Supreme Court?

The second question is does 18 U.S.C. 1341 meet the standards for vagueness inquiry and implicate the principle of federalism, after the Court's decision in Neder?

The third question is, prior to Neder 18 U.S.C. 1341 did not so much as mention materiality and thus the factual basis of the Kenemore's indictment does not charge the commission of an offense? Likewise the indictment did not place Kenemore upon notice of the element.

The fourth question is was this Court's decision in Neder an intervening decision on substantive law?

The fifth question is materiality a recurring error?

Must a Petitioner always resort to the Savings Clause of 28 U.S.C. 2255 to file a 28 U.S.C. 2241?

Does it invoke the suspension of the Writ Doctrine of Article 1 Section 9?

Does the Supreme Court need to provide guidance as to factors that must be satisfied to file a 2241 when a 2255 is

inadequate and ineffective?

Did this Court mean what it said in United States v. Cabrales 524 US- 1 (1998)

Is venue a jurisdictional element?

Three Protections not waivable
Subject Matter jurisdiction
Materiality
Cotton
Venue
When must it be decided?

**Lists of Parties**
**Rule 14.1 Statement**

The Parties to this proceeding are: Lawernce D. Kenemore Jr. and the United States of America.

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## BRIEF OF PETITIONER

## OPINIONS BELOW

The Fifth Circuit Court of Appeals per curiam order is (Appendix -1). The Magistrates Report and Recommendations is (Appendix -2). The District Judge for the Eastern District of Texas Order of Dismissal and Final Judgment is (Appendix-3). Kenemore's Notice of Appeal is (Appendix- 4).

## JURISDICTION

The decision sought to be, reviewed was entered by the United States Court of Appeals for the Fifth Circuit on October 16, 2002. 'This Court has Jurisdiction to review that decision under 28 U.S.C. 1254 (1).

## CONSTITUTIONAL, STATUATORY PROVISIONS INVOLVED

The relevant provisions of 18 USC 1341 is (Appendix-5); the Fourteenth Amendment (Appendix-6); the Sixth Amendment (Appendix-7); the Fifth Amendment (Appendix-8); Venue (Appendix- 7,10,11)

## STATUTES INVOLVED

This case is ultimately quite easy. Congress enacted 18 U. S. C. 1341(Appendix- 5), a statute imposing criminal sanctions for Mail Fraud. This statute is, at a minimum, ambiguous with respect to the essential elements, especially the essential element of materiality. Unless the statute is clear, the question of whether vagueness should be resolved for or against Kenemore can have only one answer. Due process considerations embodied in the Fifth, Sixth, and Fourteenth

Amendments point clearly to an interpretation that favors Kenemore.

Despite the attempts of the lower Courts to disregard sound teachings on Federal Rules of Criminal Procedures 18 (Appendix -11); Article 3 Clause 2 (Appendix- 10); the Sixth Amendment (Appendix- 7), and the Cabrales decision, this Court is able to give sound teaching to the lower courts.

## STATEMENT OF THE CASE

Kenemore was indicted in the Northern District of Texas in a 25 Count Indictment charging mail fraud, conspiracy, money laundering, and false statement. (Appendix-9)

Prior to the start of the trial, Kenemore filed Motions objecting to subject matter jurisdiction and venue which were subsequently denied.

During trial Kenemore filed requested jury instructions with the court, specifically on materiality and venue, which were denied by the Court.

Prior to the jury retiring to deliberate, Kenemore objected to the jury charge, which was denied by the Court.

After a six week and one day trial, Kenemore was found guilty by the jury of all 25 counts.

Kenemore was sentenced to 235 months incarceration.

Kenemore filed a direct appeal, which was denied by the Fifth Circuit without comment, on any issue.

Kenemore filed a 2255 on the single issue of denial of counsel which was denied by the District Court and the Fifth

Circuit.

Kenemore in 2000 began research on the Venue and Materiality issues and found this Courts substantive law rulings and filed his 2241 in the Eastern District of Texas where he was incarcerated.

The Magistrate's Order and Recommendation Attached (Appendix-2) was affirmed by the District Judge. (Appendix-3)

Kenemore appealed to the Fifth Circuit, which issued it's per Curiam Order, attached as (Appendix-1) on October 16, 2002.

**WAS KENEMORE TRIED ON CONDUCT THAT WAS NOT A CRIME?**

It is undisputed that Kenemore' s Grand Jury failed to find the essential element of materiality.

In the same vein, the indictment does not establish that any material misrepresentations were made by the Grand Jury, and of course it was not required at the time.

Applying these fundamental principles in conjunction with Neder, Kenemore could not have been tried for mail fraud.

Here the Fifth Circuit shifts the blame to Kenemore for not including materiality argument in his 2255 (Appendix-1 Page 2) and sub silentio concluded that Kenemore' s Neder argument was for naught. Such burden shifting has been rejected by this Court in both Sullivan v Louisiana 508 US 275 (1993) and United States v Gaudin 575 US 506 (1995).

It blinks at reality to think even for a moment that the materiality essential element was not a decisive Grand Jury issue.

(A)

**McNALLY-NEDER**

It should not fall on deaf ears with this Court that in 1987 this Court decided McNally v United States 483 US 350 (1987) and in 1988 Congress in response passed 18 U.S.C. 1346 as an amendment to the Anti-drug abuse Act of 1988.

In 1999 this Court decided Neder v United States 507 US 1(1999) and as of this date Congress has made no attempt to amend 18 U.S.C. 1341.

This Court is therefore left where it left off with Neder, "Materiality has always been an element of the mail fraud, wire fraud and bank fraud statutes." 1341 is a statute that under the Fair Warning Doctrine did not advise all the essential elements to bring Kenemore within its purview, and so his indictment.

(B)

**MATERIALITY ELEMENT IS A RECURRING ERROR.**

The Fifth Circuit Court's decisions that Neder did not constitute a change in substantive law is in conflict with this Court's jurisprudence and has diluted this Court's decisional power as to substantial rights as it concerns 18 U. S. C. 1341 and the essential element of materiality, and will continue to recur in the future.

On point U. S. v Gee 226 F3d 885, 891 (7th Cir. 2000). "The Government concedes that Neder holding will be retroactively applied to this case". As in Kenemore's case, (Appendix- 9) the indictment merely alleges a scheme to defraud which Neder Court ruled insufficient.

Evidence points to the fact that there are "numerous" Neder arguments lurking in the annals of the Judiciary, and will continue to be brought to this Court as they were in the weeks prior to Kenemore' s Writ.

(C)

**THE DUE PROCESS CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENT**

The Due Process Clause of the Fifth and Fourteenth Amendments require the Legislature to specify the elements of Criminal offenses. There are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute. Fasulo v United States 272 U 5 620, 629 (1926)

Until Neder, materiality was not an element of 18 U.S.C. 1341 and Circuit precedent created a whole cloth of Judicial interpretations that varied from Circuit to Circuit. The result was a truly extraordinary statute in which the substantive force of the statute varied in each Judicial District.

Respect for the Justice System would be subverted if this Court would refuse to reverse Kenemore's conviction, where the application of 18 U.S.C. 1341 to his conduct deprived him of Due Process of the Law.

(D)

## FAIR WARNING DOCTRINE

Even if Kenemore was fully familiar with 18 U.S.C. 1341 (Appendix- 5) at the time of his indictment, and the case law, he would have lacked any comprehensible fair warning that 18 U.S.C. 1341 included materiality as an essential element. Accordingly, application by the Grand Jury of 18 U.S.C. 1341 violates the Fair Warning Doctrine, and the failure of the Congress to amend the statute, as they did after McNally v United States 483 U 5 350 (1987) and add materiality continues to violate this Doctrine.

The requirement is imposed by the Supreme Court of the Fair Warning Doctrine to speak more clearly was for the benefit of the public, the average citizen who must be forewarned and given notice that certain conduct may subject him to Federal prosecution

(E)

## LAW OF THE CASE DOCTRINE

The law of the Case Doctrine goes to an Appellate Court's relationship to the Court of the Trial. See 18 C. Wright A. Miller, and E. Cooper, Federal Practice and Procedure @ 4478 (1981) United States v Wells 519 U 5 482, 488 N. 4 (1997)

The law of the case by the Government as evidenced by the. Grand Jury indictment, (Appendix -9) and jury instruction is that "materiality" is not an element of 18 U. S.C. 1341.

The Law of the case Doctrine holds the government to this position and it cannot change it's position on it's way to

the Supreme Court.

Adherence to this rule does not come without some costs. The Law of the Case Rule binds the Court's hands and restricts the Court of Appeals from fulfilling it's usual rule of Reviewing lower Courts decisions for errors of law Wells @ 925-26

(F)

**WAS THE COURT'S BELOW DECISION CONTRARY TO CLEARLY ESTABLISHED LAW AS DETERMINED BY THE SUPREME COURT?**

The statutory phrase " clearly established Federal Law as determined by the Supreme Court of the United States" refers to holdings as opposed to dicta of this Court's decisions Williams v Taylor 529 U 5 362. 412 (2002), Neder v United States 527 U 5 1, 25 (1999) this Court unequivocally established that materiality has always been an element of the mail fraud, wire fraud, bank fraud statute 18 U.S.C. 1341 et seq.

The Neder case on 18 U.S.C. 1341 was a change in substantive law, the statute as of today does include materiality as an element. While a new rule of Constitutional Procedure generally does not apply retroactively on collateral review, a new rule of substantive criminal law is presumptively retroactive, because a defendant may have been punished for conduct that simply was not illegal. Bousley v. United States 523 U 5 614, 620 (1998)

Certainly at the time of Kenemore' s indictment, materiality was not an element of 18 U.S.C. 1341, therefore, it would have been contrary to existing law for the government to instruct the Grand Jury on the essential element of

materiality.

This Court's Neder decision undoubtedly qualifies as "clearly established Federal Law as determined by the Supreme Court of the United States."

The set of facts in Kenemore' s case are materially indistinguishable from Neder. However the District Court and the Fifth Circuit applied the Neder substantive law in a way that contradicts the governing law of Neder.

The Fifth Circuit's decision in Kenemore's case involves an unreasonable application (not an incorrect application) of clearly established Federal Law as determined by this Court.

Absent a conclusive ruling by this Court, that Neder created a substantive rule of law, District Courts and Circuit Courts will continue to deny defendants their right to have a Grand Jury determine all the. essential elements of 18 U.S.C. 1341.

(G)

**DOES 18 U.S.C. 1341 MEET THE STANDARDS FOR VAGUENESS INQUIRY AND IMPLICATE THE PRINCIPLES OF FEDERALISM?**

The first inquiry that bears on vagueness- the Sufficiency Notice- is whether the statute as it is written provides notice sufficient to alert ordinary people (t)o what conduct is prohibited. Kolender v Lawson 461 U 5 352. 357 (1983).

The essential element of materiality absent from the text of 18 U.S.C. 1341 simply provides no clue to the public, or the

Courts, as to what conduct is prohibited under the statute.

The second vagueness inquiry (and the "more important" of the two) is whether [s]tatutory language [is] of such a standardless sweep [that it] allows policemen, prosecutors, and juries to pursue their personal predilections Smith v Goguen 415 U S 506. 575 (1974). With the essential element of materiality missing this creates a standardless sweep.

If the words of a criminal statute insufficiently defines the offense, it is no part of defference to Congress for this Court to intuit or invent the crime, and this Court cannot assume the place of Congress.

The absence from 18 U.S.C. 1341 of the essential element, materiality, implicates the principles of Federalism, that is 1341 is unconstitutionally vague as applied to Kenemore.

## II

## MUST A PETITIONER ALWAYS RESORT TO THE SAVINGS CLAUSE OF 28 U.S.C. 2255 TO FILE A 28 U.S.C. 2241 HABEAS CORPUS

(Appendix -1 Page- 2) asserts that for Kenemore to bring a 2241 that he must meet the Savings Clause of 2255. Fifth Circuit case law is firm on this point. Henderson v. Haro 282 F3rd 862, 863 (5th Cir 2002). Citing cases.

However varying standards have been adopted by the Circuits. See Reyes-Requena v US 243 F3rd 893, 903-04 (5th Cir 2001) surveying cases. See also In re: Jones 226 F 3rd 328, 33 334 (4th Cir 2000); Wofford v. Scott 177 F3rd 1236, 1244 N-3 (11th

Cic 1999); United States v. Barrett 178 F3rd 34, 52 (1st Cir 1999); Treistman v United States 124 F3rd 361, 377 (2nd Cir 1997); In re: Dorsainvil 119 F3rd 251. 252 (3rd Cir); In re: Hanserd 123 F3rd 922, 929-932 (6th Cir 1997), all these standards have caused application of the law to be unequally applied based upon the Circuit a person lives in. The Circuits are deeply divided and require guidance.

The question that can be answered only by this Court is, must Kenemore always resort to the Savings Clause of 28 U.S.C. 2255 to file a 28 U.S.C. 2241 Habeas Corpus, and set the Standards to be applied equally by the Circuit and District Courts.

**(A)**

**DOES IT INVOKE THE DOCTRINE OF SUSPENSION OF THE WRIT OF ARTICLE 1 SECTION 9 OF THE CONSTITUTION**

If there is a Constitutional Entitlement to a reasonable procedure for correcting fundamental legal errors in criminal process, then interpreting 2255 Savings Clause narrowly as the District Court and Fifth Circuit has done, would deny Kenemore that entitlement.

Is the adequacy of 2255 so narrowly worded that a Constitutional Right to Habeas Corpus moots the needs of Practical Judicial enforcement?

The fear that an innocent person's liberty, or worse, his life, may be forfeited because of unfair proceedings , has long been recognized as one, among other, circumstances that makes issuance of the Writ most felicitous Bousley v. United

States 118 S Ct 1604, 1610 (1998).

**(B)**

**THE SUPREME COURT NEEDS TO PROVIDE GUIDANCE AS TO THE FACTORS THAT MUST BE SATISFIED TO FILE A 2241 WHEN A 2255 IS INADEQUATE OR INEFFECTIVE**

With all the varying standards outlined above, this Court can bring a fairness and continuity to the Judiciary by setting forth the necessary factors.

Here are examples:

And as subsection (2) speaks only to intervening Supreme Court cases based on Constitutional grounds, the provision does not provide any avenue through which a petitioner could rely on an intervening Court decision based on the substantive reach of a Federal Statute. Reyes- Requena v U.S. 243 F3rd 893 903 (5th Cir 2001)

(with)

Smith is actually innocent having been convicted on the basis of an incorrect understanding of 924 (c), and 2255 relief is unavailable In re Smith 285 F3rd 6 (D. C. Cir

2002)

(with)

The Second Circuit devised its Savings Clause test based on whether failure to permit a remedy would raise. serious Constitutional questions Treistman v. United States 124 F3rd 361, 377 (2nd Cir 1997).

This Court needs to provide guidance to the lower Courts to bring fairness and continuity to the Judicial System.

## III

## IS VENUE A JURISDICTIONAL ELEMENT?

## (A)

## DID THIS COURT MEAN WHAT IT SAID IN UNITED STATES V. CABRALES 524 U S 1 (1998)

The Constitution twice safeguards Kenemore's Venue Rights. (Appendix - 7 and 10), and the statute (Appendix - 11) adds to the safeguards, that is the trial of all crimes.... Shall be held in the state where said crimes shall have been committed; by an impartial jury of the State and District wherein the crime shall have been committed.

In this case there is not the slightest indication that the Fifth Circuit (Appendix -1), or the District Court (Appendix - 2) reviewed or ruled on this issue in any fashion. Nor is there any

indication that either the District Court or the Court of Appeals felt bound in any way by the Sixth Amendment, Article 3, Section - 2, Clause 3 or the Federal Rules of Criminal Procedure Rule 18.

It is of the essence of the Common-law method that Courts consider and rely on decisions from the Supreme Court.

What the Fifth Circuit and District Court cannot avoid is the simple fact, quickly and easily verifiable by computer assisted research: The locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it" Cabrales @ 6.

**(B)**

**THREE PROTECTIONS NOT WAIVABLE**

The Sixth Amendment (Appendix - 7) Article 3 Section-2, Clause -3 (Appendix -10) and Federal Rules of Criminal Procedure Rule -18 (Appendix - 11), all speak to the issue of Venue, and all protect Kenemore's rights. Even though Kenemore did not waive this issue (pre-trial motion on venue) subject matter jurisdiction is not waive able and the District Court and Fifth Circuit did not in any fashion review it.

(Appendix -9) Kenemore's Indictment shows Count - 2 Page 14, paragraph # 3 (b), page -15 paragraph #4 (1) (2) (3) (4) (5), Count-16, 17, 18 all took place in California and had no connection with the Northern District of Texas.

If the Court meant what it said in Cabrales then this Court should take the Fifth Circuit to task for not adhering to its case law.

## IV

## SUBJECT MATTER JURISDICTION

## MATERIALITY - VENUE

## (A)

## MATERIALITY

It cannot be gainsaid that the Indictment to which Kenemore went to trial on and was convicted after numerous objections, alleged mail fraud of the very form held in Neder not to constitute an offense under 18 U.S.C. 1341.

That is the Indictment alleges a specific course of conduct that was outside of the reach of the mail fraud statute. Kenemore's innocence of the charged offense appears from the very allegations made in the indictment, not from the omission.

When a Court without Jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void long after a defendant has fully suffered their direct force.

## COTTON

This Court in it's Cotton decision did not address whether the sufficiency of an indictment assumes a jurisdictional dimension, when the only facts it alleges, and on which a subsequent finding of guilt is based, describes conduct that is not proscribed by the charging statute.

Unlike Cotton, Kenemore is not raising an omission from his indictment of a fact that goes to sentencing, his challenge is to the subject matter jurisdiction of the Trial Court.

Kenemore has raised Subject Matter Jurisdiction of the Court from pre-trial to this writ, and no Court has made a Judicial Finding.

**(B)**

**VENUE**

Subject Matter Jurisdiction is also invoked when an Indictment fails to allege Venue, for without venue the Court lacks Subject Matter Jurisdiction.

Surely Venue is an essential element as this Court stated in Cabrales. As such, it invokes subject matter jurisdiction of the District Court. Venue is a matter of substance and not form and the missing element cannot be inferred from other allegations of the Indictment.

Throughout the years of this Courts jurisprudence there has been one unchanging common requirement; in cases directly facing this issue, is the necessity for the indictment to charge essential elements of the offense to give the Court subject matter jurisdiction? United States v. Carll 105 US 611, 612 (1881) Hagner v. United States 205 US 427, 431 (1932) Morrissette v. United States 342 US 246-270 (1952) United States v. Debrow 346 US 374, 376 (1953) Russell v. United States 369 US 749, 763 (1962) The answer has always been yes! Especially as here the implication of the 6th Amendment, Article 3 Section 2 Clause 3 which have major Constitutional reasons why the Court lacked subject matter jurisdiction, that is Venue was not set in that Court.

(C)

**WHEN DECIDED**

Subject matter jurisdiction can be raised at anytime, Ruhrgas A.G. v. Marathon Oil 526 US 574 (1999) and must be policed by the Courts on their own initiative, even at the highest level

Simply put, Kenemore raised it in the District Court and the District Court did not address it (Appendix 2 and 3), and he raised it in his Appeal Brief, and the Circuit Court did not address it (Appendix 1).

When will someone ever rule on Subject Matter Jurisdiction? This is the Court of the last resort.

**CONCLUSION**

**THE ISSUES PRESENTED ARE RECURRING**

**AND OF GREAT PRACTICAL IMPORTANCE**

Resolving the issues raised by Kenemore that has divided the Courts, would give this Court the opportunity to provide uniformity in the aspect of Due Process of the 5th and 14th Amendments.

This Court will be able to clarify it's Ruling in Neder v. United States and Cleveland v. United States 531 US 12 (2000) by ruling for Kenemore that these cases are substantive law rulings that establish his conduct as set forth in the Indictment is not a crime.

The decisions since Neder, meander over the Judicial landscape to dodge the necessity to answer the question well settled in Neder, A single authoritative, strongly worded decision here would end all of this assembly line decision making.

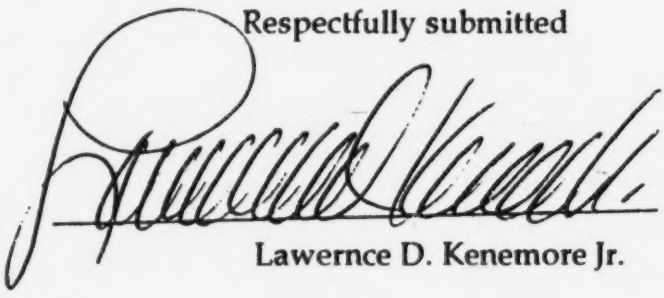
Furthermore, the subject matter jurisdiction Doctrine is in jeopardy of being eroded by the District Court and the Circuit Court's failure to address it when raised.

And the use of the Procedural Default Rule by the Fifth Circuit in Kenemore' s case (Appendix -1) deprives Kenemore and others the right to be heard when this Court makes decisions that establish that the conduct in the Indictment is not a crime, and that he is actually innocent.

Kenemore now asks this Court to take to task the lower Courts for failing to address Venue, a Venue that this Court (which Kenemore cited) stated is necessary for money laundering. Missing from (Appendix -1) and (Appendix -3 ) is any discernable Judicial decision on venue.

For these reasons, this Writ should issue.

Respectfully submitted



Lawernce D. Kenemore Jr.

**APPENDIX-1**

**UNITED STATES COURT OF APPEALS**
**FIFTH CIRCUIT**

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No. 02-40364

(Summary Calendar)

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U.S. COURT OF APPEALS
FILED
OCT 16 2002
CHARLES R. FULBRUGE III
CLERK

LAWERNCE D. KENEMORE, JR.,

Petitioner-Appellant,

versus

N.L. CONNER, WARDEN,

Respondent-Appellee.

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Appeal from the United States District Court
For the Eastern District of Texas
USDC No. 5:01-CV-89

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Before DAVIS, WIENER, and EMILIO M. GARZA,
Circuit Judges.

PER CURIAM.*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Lawernce D. Kenemore, federal prisoner # 26175-077, appeals from the district court's dismissal of his 28 U.S.C. § 2241 petition. Kenemore also moves us to permit him to supplement his brief to bring to our attention two recent Supreme Court cases, *Ring v. Arizona*, 122 S. Ct. 2428 (2002) and *Harris v. United States*, 122 S. Ct. 2406 (2002).

In his appeal, Kenemore argues that a defect in his indictment deprived the district court of jurisdiction. Relying on two Supreme Court cases, *Neder v. United States*, 527 U.S. 1 (1999) and *United States v. Cabrales*, 524 U.S. 1(1998), Kenemore also argues that he was convicted of a nonexistent offense. Kenemore also argues that the district court erred in not reviewing his argument in light of the legal doctrine articulated in *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

Kenemore argues that he should be allowed to proceed by way of the savings clause of 28 U.S.C. §

2255. To bring his § 2241 petition via the § 2255 savings clause, Kenemore must show that § 2255 provides him with an inadequate or ineffective remedy. *Pack v. Yusuff* 218 F.3d 448, 452 (5th Cir. 2000). To make this showing, Kenemore must demonstrate that his claims are based on a retroactively applicable Supreme Court decision which establishes that he may have been convicted under a non-existent offense, and that his claims were foreclosed by circuit law at the time when they should have been raised in his trial, appeal, or first § 2255 motion. *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001).

First, Kenemore ' s argument that a defect in his indictment deprived the district court of jurisdiction has no merit. *See United States v. Cotton*, 122 S. Ct. 1781, 1785 (2002)(holding that defects in an indictment do not deprive a court of its power to adjudicate a case).

Second, Kenemore cannot rely on *Neder or Ca brales* to show that 28 U.S.C. § 2255 provided him with an inadequate remedy, because the Supreme Court decided these two cases before the district court denied Kenemore's § 2255 motion. Kenemore had the option of

raising these claims on his first § 2255 motion, but failed to do so.

Third, Kenemore has not demonstrated that his *Accardi* claims are based on a retroactively applicable Supreme Court decision establishing that he may have been convicted of a nonexistent offense, or that his *Accardi* claims were previously foreclosed by circuit law.

Kenemore's motion to supplement his brief on appeal to bring to the court's attention new Supreme Court cases is GRANTED. The district court's judgment dismissing Kenemore § 2241 petition is AFFIRMED.

**APPENDIX-2**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

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| **LAWERNCE D. KENEMORE** | § | |
| **#26175-077** | § | |
| | § | |
| **VS.** | § | **CIVIL ACTION NO.** |
| | § | **5:01CV89** |
| | § | |
| **N.L. CONNER** | § | |

**REPORT AND RECOMMENDATION**
**OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Lawrence Kenemore, Jr., an inmate confined at the Federal Correctional Institution ("FCI") Texarkana, Texas, proceeding *pro se* and *in forma pauperis*, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The petition was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

**Background**

On May 6, 1996, following a six week trial,

Petitioner was found guilty of ten counts of mail fraud and conspiracy to commit mail fraud and four counts of money laundering in the United States District Court for the Northern District of Texas, Dallas Division. Petitioner appealed the convictions and they were affirmed on August 27, 1998, by the United States Court of Appeals for the Fifth Circuit. Thereafter, Petitioner filed a motion to vacate, set aside, or correct sentence pursuant to 28 U S.C. § 2255. The motion was denied on November 17. 1999, and Petitioner did not appeal the decision. Subsequently, Petitioner filed a motion for leave to file a petition for writ of *coram nobis*. The petition was denied on February 26, 1993.

On September 7, 1999, Petitioner filed a petition for writ of habeas corpus pursuant to 23 U.S.C. § 2241, wherein he attacked his underlying conviction alleging actual innocence, error by the trial court in failing to give proper jury instructions, and error by the trial court in failing to dismiss the indictment for proper venue. On August 8, 2000, Petitioner's petition was denied On April 2, 2001, Petitioner filed the instant cause of action pursuant to 28 U.S.C. § 2241, alleging

his indictment was defective because it failed to charge specific elements; the underlying court did not have jurisdiction; and there was error in the grand jury process.

On July26 2001 Respondent filed his response to the petition for writ of habeas corpus and his motion to dismiss (Dkt. No. 15). In his motion, Respondent contends that because Petitioner alleges his indictment was defective, he should have filed a motion to vacate, set aside, or correct sentence pursuant to § 2255, instead of a petition for writ of habeas corpus pursuant to § 2241. Moreover, Respondent argues Petitioner's petition does not fall within the "savings clause" of § 2255. Based on these contentions, Respondent asks the Court to dismiss the Petitioner's petition for writ of habeas corpus.

## Discussion

Petitioner is challenging his conviction pursuant to § 2241 as opposed to § 2255. The disposition of the petition is governed by the Fifth Circuit's opinion in *Pack v. Yusuff*, 218 F.3d 448 (5th Cir. 2000) The Fifth Circuit noted that a § 2241 proceeding attacks the

manner in which a sentence is carried out. *Id.* at 451 A § 2255 motion is the method to mount a collateral attack on a federal conviction. *Id.* "A petition for a writ of habeas corpus pursuant to 2241 is not a substitute for a motion under 2255" *Id* at 452 (citations omitted) A § 2241 petition that seeks to challenge the validity of a federal sentence must either be dismissed or construed as a § 2255 motion. Id.

The Court in Pock noted that § 2255 contains a "savings clause" that will permit a § 2241 petition to act as a § 2255 motion in rare cases where the petitioner shows that the remedy under § 2255 is inadequate or ineffective. *Id.* The Court held that a § 2241 petition may not be used as a substitute for a § 2255 motion just because the § 2255 motion would be time barred. *Id.* at 452-53. The Fifth Circuit also noted that other circuits have held a defendant may invoke the "savings clause" exception "only when the Constitution demands it, or where otherwise Congress would violate the Suspension Clause by imposing a conviction or sentence without allowing for section 2241 relief." Id. at

453 (*citing In re Davenport*, 147 F.3d 605, 609 (7th Cir. 1998)). The Fifth Circuit chose not to decide the precise scope of the "savings clause," but held that the petitioner in that case did not establish the inadequacy or ineffectiveness of the § 2255 remedy. *Id.*

Moreover, the *Davenport* court concluded that "a federal prisoner should be permitted to seek habeas only if he had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 2255 motion " 147 F.3d. at 611. The Court went on to specify the following qualifications' First, the change in the law has to be made retroactive by the Supreme Court; second, the change in the law must be one that eludes the permission in § 2255 for successive motions and, third, the "change in law" is not to be equated to a difference between the law in the circuit in which the prisoner was sentenced and the circuit in which he is incarcerated. *Id.* at 611-12.

In the instant case, Petitioner fails to meet his burden as set forth above He is attempting to impermissibly use a § 2241 petition as a substitute for a

§ 2255 motion. Petitioner has not shown that a § 2255 motion would have been inadequate or ineffective He has not cited to a change in any applicable law which has been made retroactive by the Supreme Court nor has he successfully demonstrated that he was prevented from asserting the claims herein at an earlier opportunity. Petitioner has not satisfied the Davenport requirements, and he may not avail himself of § 2241 relief in this case.

**Recommendation**

It is accordingly recommended that Respondent's Motion to Dismiss (Dkt. No. 15) be GRANTED, and Petitioner's petition for writ of habeas corpus be DISMISSED WITH PREJUDICE.

**Objections**

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report. A party's failure to file written objections to the findings, conclusions and recommendations contained in this report within ten days after being served with a copy shall bar that party

from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court *Douglass v United States Auto Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

**Signed** this 28th day of December 2001.

"S/ Caroline M Craven"

CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE

**APPENDIX-3**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

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| **LAWERNCE D. KENEMORE** | § | |
| **#26175-077** | § | |
| | § | |
| **VS.** | § | **CIVIL ACTION NO.** |
| | § | **5:01cv89** |
| **N.L. CONNER** | § | |

EOD JAN 28 2002

**FINAL JUDGMENT**

the Court having considered the Petition for Writ of Habeas Corpus and rendered its decision by opinion issued this same date, it is hereby **ORDERED** that the petition is **DISMISSED WITH PREJUDICE.**

**SIGNED** this 25TH day of January, 2002.

"S/ David Folsum"

DAVID FOLSUM
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

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| **LAWERNCE D. KENEMORE** | § | |
| **#26175-077** | § | |
| | § | |
| **VS.** EOD JAN 28 2002 | § | **CIVIL ACTION NO.** |
| | § | **5:01CV89** |
| **N.L. CONNER** | § | |

**ORDER OF DISMISSAL**

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven who issued a Report and Recommendation recommending Petitioner's Petition for Writ of Habeas Corpus be dismissed with prejudice. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. The Court conducted a de novo review of the Magistrate Judge's findings and conclusions. Petitioner's objections are without merit. The findings and

conclusions the Magistrate Judge are correct, and the undersigned hereby adopts the same as the findings and conclusions of this Court Accordingly, it is

**ORDERED** that the Petition for Writ of Habeas Corpus is **DISMISSED WITH PREJUDICE.** All motions by either part not previously ruled on are hereby **DENIED** It is finally **ORDERED** that the order referring the case to Magistrate Judge Caroline Craven is

**VACATED.**

**SIGNED** this 25th day of January, 2002.

"S/ _____"

DAVID FULSOM

UNITED STATES DISTRICT JUDGE

**APPENDIX - 4**

**Lawernce D. Kenemore Jr.**
**26175-077 #G**
**P.O. Box 7000**
**Texarkana, Teaxas 75505-7000**

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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TEXAS**
**TEXARKANA DIVISION**

| | | |
|---|---|---|
| **Lawernce D. Kenemore Jr.** | ) | |
| **Plaintiff** | ) | |
| **V.** | ) | |
| | ) | **No. 01-cv-089** |
| **N.L. Conner (Warden)** | ) | |
| **Defendant** | ) | |
| | ) | |

**NOTICE OF APPEAL**

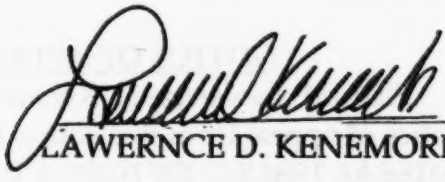
Plaintiff, Lawernce D. Kenemore Jr, hereby files his notice of appeal from this courts **ORDER OF DISMISSAL ISSUED BY JUDGE DAVID FOLSOM ON** January 25, 2002 and filed in this Court on January 28, 2002, dismissed with prejudice this Plaintiffs 28 U.S.C. 2241 which adopted the findings of the Magistrate, to the Fifth Circuit Court of Appeals.

LAWERNCE D. KENEMORE Jr.

**CERTIFICATE OF SERVICE**

I LAWERNCE D. KENEMORE JR. CERTIFIES THAT ON THE 11th DAY OF February 2002 PLACED IN THE MAIL 1'ST CLASS POSTAGE PREPAID A COPY OF THE ATTACHED NOTICE OF APPEAL TO:

AUSA
Thomas Kopf
110 N. College #700
Tyler Texas 75702



LAWERNCE D. KENEMORE Jr.

**§ 1341. Frauds and swindles**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such mater or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

## APPENDIX - 6

## AMENDMENT XIV – CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

**Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.**

**Section 1.** All persons born or naturalized in the United States. and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial

officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State. being twenty-one years of age. and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebel-

## APPENDIX-7

# AMENDMENT VI – JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his Favor, and to have the Assistance of Counsel for his defence.

## APPENDIX - 8

### AMENDMENT V – GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, in less on a presentment or indictment of a Grand Jury except in cases arising in the land or naval or in the Militia, when in actual service in time of War or public danger nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law nor shall private property be taken for public use, without just compensation.

**APPENDIX-9**

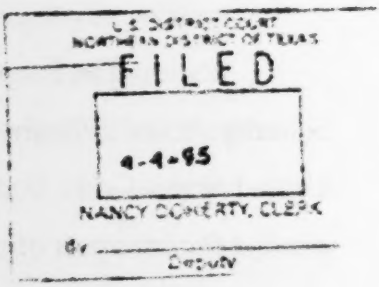
IN THE UNITED STATE DISTRICT COURT

FOR THE NORTHERN DISTRICT COURT

DALLAS DIVISION

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UNITED STATES OF AMERICA




V.

CRIMINAL NO. 3:95-CR-099

LAWERNCE DERWOOD KENEMORE, JR. (1) *
aka Lawrence D. Kenemore, Jr. *
aka Larry Kenemore *
SHERLYN DENICE KENEMORE (2) *
aka Sherry Kenemore *
JOSEPH BRYAN KENEMORE (3) *
MICHAEL J. MCKEOWN (4) *
CHRIS WAYNE KELLUM (5) *
CRYSTAL KELLUM (6) *
VERNON L. BYRD (7) *
aka Tack Byrd *
CHARLES E. POSTLE (8) *
aka Pat Postle *

The Grand Jury charges:

## INTRODUCTION

At times material to this Indictment:

### A. THE ERISA ACT OF 1974

1. The Employee Retirement Income Security Act of 1974 (hereinafter ERISA), Title 29, United States Code, Section 1001 et seg., was enacted to protect the interests of participants in private sector employee benefit plans.

2. Through the enactment of ERISA it became national policy to protect interstate commerce and the interests of participants in employee welfare benefit plans and their beneficiaries by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee welfare benefit plans.

3. An employee welfare benefit plan is a

plan, fund or program, established or maintained by an employer or association of employers for the purpose of providing medical, surgical, hospital, sickness, accident, disability and death benefits for employees, their beneficiaries and other plan participants.

4. A fiduciary of an employee welfare benefit plan is anyone who exercises discretionary authority or control in the management of such a plan or disposition of its funds or assets. A fiduciary is required to discharge his duties with respect to the plan with care, skill, prudence, and diligence and to act solely in the interest cf the employees, participants and beneficiaries covered by the plan, and for the exclusive purpose of providing benefits to them and for defraying reasonable expenses of administering the plan. A fiduciary is barred by ERISA from dealing with the funds or assets of the plan in his own interest or for his own account

**B. THE DEFENDANTS**

1. Defendant LAWERNCE DERWOOD KENEMORE, JR., also known as Lawrence D. Kenemore, Jr., also known as Larry Kenemore, managed and controlled ATG ASSOCIATION OF TRUST AND GUARANTEE of which he sometimes represented himself to be a "senior partner" and at other times the "president."

2. Defendant SHERLYN DENICE KENEMORE, also known as Sherry Kenemore, was the wife of defendant LAWERNCE DERWOOD KENEMORE, JR., GUILDS OF AMERICA; he also represented himself to be a "Trustee" of the AFFILIATED GUILDS OF AMERICA trust fund.

C. <u>THE DEFENDANTS' ORGANIZATIONS</u>

1. NATIONAL EMPLOYEES TRADE ASSOCIATION LOCAL 101, NATIONAL EMPLOYEES TRADE ALLIANCE and AFFILIATED GUILDS OF AMERICA were created by the defendants, who

represented them to be labor unions. The defendants represented that these "labor unions" sponsored employee welfare benefit plans in the form of trust funds to pay workers compensation and health claims of their "union members." The defendants issued to employers certificates guaranteeing workers compensation benefits covered by the trust funds, when in fact neither the "trust funds" nor the "unions" possessed sufficient assets to support such a guarantee.

2. ATG ASSOCIATION OF TRUST AND GUARANTEE ("ATG") was created by the defendants and was represented to be an "employer association." The defendants used ATG to market the benefit program promised by the "union" affiliated employee welfare benefit plans.

3. NATIONAL CLAIMS ADMINISTRATION ("NCA"), was created by the defendants and was represented to be a national, professional, third party claims administration company, which was independent of ATG and the "Unions,' and which was to determine which claims were valid and should be paid. The defendants used

NCA to delay, deny and otherwise obstruct the payment of workers compensation and health claims of injured employees.

4. All employer contributions submitted by employers to ATG in order to provide workers compensation and health benefits for

## COUNT 1: CONSPIRACY

1. The Grand Jury realleges and incorporates the Introduction of this Indictment as if fully set forth herein.

2. Beginning on about February 1, 1993, and continuing through on or about January 31, 1995, in the Dallas Division of the Northern District of Texas and elsewhere, the defendants LAWERNCE DERWOOD KENEMORE, JR. aka Lawrence D. Kenemore, Jr., aka Larry Kenemore, SHERLYN DENICE KENEMORE, aka Sherry Kenemore. JOSEPH BRYAN KENEMORE, MICHAEL J. MCKEOWN, CHRIS WAYNE KELLUM, CRYSTAL KELLUM,

VERNON L. BYRD, aka Tack Byrd and CHARLES E. POSTLE, aka Pat Postle knowingly, willfully and unlawfully combined, conspired confederated and agreed with each other and with other individuals, known and unknown to the Grand Jury, to commit certain offenses against the United States, to wit:

A. to devise a scheme and artifice to defraud and to obtain money from employers by means of false and fraudulent pretenses, promises, and representations and, in execution thereof, caused the use of the United States mails in violation of Title 18, United Stares Code, Section 1341; and

B. to embezzle, steal, unlawfully and willfully abstract and convert to their own uses, and to the uses of others moneys, funds, premiums, credits and assets of employee welfare benefit plans subject to Title 1 of ERISA and of funds connected therewith in violation of Title 18, United States Code, Section 664.

**OBJECT OF THE CONSPIRACY AND SCHEME TO DEFRAUD**

3. The object of the conspiracy and scheme to defraud was to set up an employer association and to use entities represented to be labor unions and an unlicensed claims processing center, all created and controlled by the defendants, to induce employers to contribute money to the defendants by falsely representing that such employer contributions would be deposited into union trust funds to provide workers compensation and health coverage for the employees of such employers, and by falsely representing that such union trust funds had sufficient assets to guarantee up to $1,000,000 in workers compensation coverage per employee. In truth and in fact, the union trust funds did not have sufficient assets to cover the promised $1,000,000 guarantee and the vast majority of the employer contributions were not deposited into the union trust funds but were unlawfully diverted by the defendants.

**MANNER AND MEANS OF THE CONSPIRACY AND SCHEME TO DEFRAUD**

4. It was part of the conspiracy and scheme

and artifice to defraud that:

A. The defendants and their co-conspirators created what they represented to be labor unions, which did not previously exist, and used these "unions" for the purpose of offering programs of benefits which the defendants represented were employee welfare benefit plans under ERISA. The defendants represented to employers that these entities were labor unions despite the fact that the employees were never organized, at no time were the officers of these "unions" ever elected by their union members, at no time did these "unions" represent employees in labor–management disputes, at no time did these "unions" negotiate the terms and conditions of employment with employers on behalf of employees, at no time did these "unions" collect union dues directly from their "union members" or fulfill other typical union activities.

B. The defendants and their co-conspirators created and filed false and fraudulent documents with the United States Department of Labor regarding these "labor unions."

C. The defendants and their co-conspirators created an employer association and used it to market to employers the union employee welfare benefit plans as a low cost alternative to legitimate insurance coverage. The defendants developed and used a marketing sales pitch, which involved the following intentional and deliberate misrepresentations, among others:

(1) that ATG would provide workers compensation coverage to employers at substantial savings over premiums charged by legitimate insurance carriers;

(2) that this was possible because employer contributions would be pooled together and placed into employee welfare benefit plans which would then provide coverage when claims were made; and

(3) that the union employee welfare benefit plans had sufficient assets to provide workers compensation certificates, similar in form to a certificate

of insurance, guaranteeing coverage of up to $1,000,000 per each employee and for each accident;

when in truth:

(1) employer contributions were diverted by the defendants for their own uses and for the uses of others and were not placed in the union employee welfare benefit plans as represented; and

(2) the employee welfare benefit plans and union trust accounts affiliated with ATG did not have assets or stop-loss coverage sufficient to cover the $1,000,000 guarantee expressed on the certificates of benefit.

D. The defendants and their co-conspirators created and controlled a claims administration operation through NCA which the defendants falsely represented to be a third party, independent, national claims organization, independent of ATG and the unions, based in Phoenix, Arizona, with professional adjusters charged with investigating the workers

compensation benefit claims of employees with on-the-job injuries and ordering the payment of benefits for all valid claims. The defendants further represented that the union employee welfare benefit plans were required by federal law to pay all valid claims. In truth, NCA did not have a license to perform third party administration services, was never located in Phoenix, Arizona, was surreptitiously controlled by LAWERNCE DERWOOD KENEMORE, JR. and SHERLYN DENICE KENEMORE, and was not independent from the operations of ATG and the unions which accounted for NCA's only source of business. The defendants used NCA to delay, evade stall , deny and otherwise obstruct the payment of legitimate workers compensation and health claims of injured employees who were covered by the plan and were plan participants.

E. The defendants and their co-conspirators diverted for unauthorized purposes moneys, funds and premiums paid by employers to fund union employee welfare benefit plans. Between April 1, 1993 and August 21, 1994, the defendants received employer contributions of approximately $1,700,000 of which

approximately $300,000 (or less than 13 percent) of such employer contributions were deposited into the appropriate union employee welfare benefit plans. Approximately $1,400,000 (or more than 32 percent) of such employer contributions were used by the defendants and by others for their own purposes.

## THE OVERT ACTS OF THE CONSPIRACY

5. In furtherance of the conspiracy, and in order to effect its objects, the defendants committed the following overt acts, among others, in the Northern District of Texas and elsewhere:

(1) On or about March 31, 1993, defendants JOSEPH BRYAN KENEMORE and MICHAEL J. MCKEOWN, caused to be filed with the United States Department of Labor a Labor Organization Information Report: Form LM-1 which reported that a labor union, NATIONAL EMPLOYEES TRADE ASSOCIATION, designation number "Local 101", had been created. JOSEPH BRYAN KENEMORE and MICHAEL J. MCKEOWN purported to have signed this Form LM-l on or about February 1, 1993.

(2) On or about November 3, 1993, defendants LAWERNCE DERWOOD KENEMORE, JR. and SHERLYN DENICE KENEMORE and another individual caused to be filed in the County Clerk office, Orange County, California, a Fictitious Business Name Statement, registering "ATG ASSOCIATION OF TRUST AND GUARANTEE" as a fictitious name under which SHERLYN 0. KENEMORE, LAWERNCE 0. KENEMORE, JR. and another individual were transacting business, and stating that -the registrants had commenced to transact business under the fictitious business name on March 30, 1993.

(2) Beginning at least in or about July, 1993 defendant MICHAEL J. MCKEOWN signed certificates of benefit issued to employers which represented and guaranteed workers compensation coverage by "NETA LOCAL 101" of up to $1,000,000 per each employee and per each accicent.

(4) On or about January 24, 1994, CHRIS WAYNE KELLUM caused to be filed with the United States Department of Labor, a Labor Organization Information Report: Form LM-1 which represented the

NATIONAL EMPLOYEES TRADE ALLIANCE to be a "labor union." The form LM-1 was signed by CHRIS WAYNE KELLUM as secretary-treasurer and also purported to be signed by Tom Walsh as president when in truth and in fact Tom Walsh never signed the form LM-l and was never the President of such alleged "labor organization."

(5) Beginning at least in or about March, 1994, defendant CHRIS WAYNE KELLUM signed certificates of benefit which represented and guaranteed workers compensation coverage by "META" and by "NATIONAL EMPLOYEES TRADE ALLIANCE" of up to $1,000,000 per each employee and per each accident.

(6) On or about February 8, 1994, defendants CHARLES E. POSTLE and VERNON L. BYRD caused to be filed with the United States Department of Labor a Labor Organization Information Report: Form 124-I which represented AFFILIATED GUILDS OF AMERICA to be a "labor union." The form LN-1 was purportedly signed by CHARLES E. POSTLE and VERNON L. BYRD on January 25, 1994.

(7) Beginning at least on or about March, 1994, CHARLES E. POSTLE and VERNON L. BYRD signed certificates of benefit which promised workers compensation coverage by "AFFILIATED GUILDS OF AMERICA" of up to $1,000,000 per each employee and per each accident.

(8) On or about February 10, 1994, defendant SHERLYN DENICE KENEI4ORE signed an agreement with Mail Boxes @ 7th Street & Missouri, located at 5515 North 7th Street, Suite 5, Phoenix, Arizona 85014 in which a postal mail box was rented to receive mail addressed to NCA National Claims Administration.

(9) From in or about February, 1994 and continuing through at least on or about January 31, 1995, LAWERNCE DERWOOD KENEMORE, JR. and STIERLYN DENICE KENEMORE, caused employees to represent that NCA National Claims Administration was located at 5515 North 7th Street, Suite 5, Phoenix, Arizona.

(10) From in or about February, 1994 through at least on or about January 31, 1995, SHERLYN

DENICE KENEMORE caused mail delivered to NCA at 5515 North 7th Street, Suite 5, Phoenix Arizona to be forwarded to her home address at 2211 Twin Elms, Arlington, Texas 76012.

**ADDITIONAL OVERT ACTS**

The Grand Jury realleges all the allegations in paragraph 4 of Count 2 and the allegations in Counts 3 through 24 of the Indictment as additional overt acts.

In violation of Title 18 United States Code, Section 371 (18 U.S.C., §§ 664, 1341).

**COUNT 2: CONSPIRACY TO LAUNDER MONEY**

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 of this Indictment as if fully set forth herein.

2. Beginning at least on about February 1, 1993, and continuing through at least January 31, 1995, in the Dallas Division of the Northern District of Texas and elsewhere, defendants LAWERNCE DERWOOD KENEMORE, JR. aka Lawrence D. Kenemore, Jr., aka Larry Kenemore, SHERLYN DENICE KENEMORE, aka Sherry Kenemore, JOSEPH BRYAN KENEMORE,

MICHAEL J. MCKEOWN, CHRIS WAYNE KELLUM and CRYSTAL KELLUM knowingly, willfully and unlawfully combined, conspired, confederated and agreed with each other and with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, to wit:

A. to knowingly and willfully conduct and attempt to conduct financial transactions, with the knowledge that the property used in these financial transactions represented the proceeds of some form of unlawful activity, and which in fact represented the proceeds of a specified unlawful activity, to wit: mail fraud with the intent to promote the carrying on of such specified unlawful activity and to conceal and disguise the nature, source, location, ownership, and control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, §§ 1956(a) (1) (A) (i) and (B) (i) ; and

B. to knowingly and wil1fuby transport, transmit and transfer monetary instruments and funds from a place in the United States to or through a place outside the United States or to a place in the United States from and through a place outside the United States with the

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intent to promote the carrying on of specified unlawful activity, to wit: mail fraud in violation of Title 18, United States Code, § 1956(a) (2) (A).

**MANNER AND MEANS OF THE CONSPIRACY TO LAUNDER MONEY**

3. It was part of the conspiracy and scheme and artifice to launder money that:

A. In order to promote the carrying on of the underlying fraudulent scheme and in order to disguise and conceal their theft and diversion of funds from employers, the defendants and their co-conspirators transferred a portion of the diverted funds to various bank accounts controlled by them, including a bank account at the Arlington National Bank Arlington, Texas, in the name of "LSK Consulting, A Trust", and thereafter transferred funds from this account to the personal bank accounts of LAWERNCE DERWOOD KENEMORE, JR. and SHERLYN DENICE KENEMORE.

B. In order to promote the carrying on of the underlying fraudulent scheme and in order to

disguise and conceal their diversion and theft of assets of employee welfare benefit plans and funds connected therewith, the defendants and their coconspirators transferred funds out of the United States to an offshore bank account controlled by the defendants at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, and then returned portions of such funds back into the United States by wire transfer to bank accounts controlled by the defendants.

## THE OVERT ACTS OF THE CONSPIRACY

4. In furtherance of the conspiracy, and in order to effect its objects, the defendants LAWERNCE DERWOOD KENEMORE, JR., SHERLYN DENICE KENEMORE, JOSEPH BRYAN KENEMORE, MICHAEL J. MCKEOWN, CHRIS WAYNE KELLUM, and CRYSTAL KELLUM committed the following overt acts, among others, in the Dallas Division of the Northern District of Texas and elsewhere:

(1) On or about July 18, 1993, defendants LAWERNCE DERWOOD KENEMORE, JR.

and SHERLYN DENICE KENEMORE opened account number 1330901 at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, in the name of ATO ASSOCIATION OF A TRUST AND GUARANTEE.

(2) On or about July 28. 1993, defendant LAWERNCE DERWOOD KENEMORE, JR. caused a wire transfer of approxamately $50,000 from brokerage account number 207-64344 at Merrill Lynch, Huntington Beach, California in the name of ATG ASSOCIATION OF TRUST AND GUARANTEE to account number 1320901 at the Swiss American National Bank of Antigua, St. Johns, Antigua, West Indies, in the name of ATG ASSOCIATION OF TRUST AND GUARANTEE.

(3) On or about August 24, 1993, defendants LAWERNCE DERWOOD KENEMORE, JR. and MICHAEL J. MCKEOWN causec a wire transfer of approximately $6000 from account number 1330901 at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, in the name of ATG

ASSOCIATION 'OF TRUST AND GUARANTEE to personal money market account number 1932532 at the Landmark Bank, La Habra, California, in the name of MICHAEL J. MCKEOWN.

(4) Beginning on or about November 2, 1993 and continuing through December '20, 1993, SHERLYN DENICE KENEMORE caused four transfers in increments of $2000 each, for a total of $8000, from account number 1330901 at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, in the name of ATG ASSOCIATION OF TRUST AND GUARANTEE to personal account number 0579517 at Stillwater National Bank & Trust Co., Tulsa, Oklahoma, in the name of JOSEPH BRYAN KENEMORE.

(5) On or about January 20 1994, LAWERNCE DERWOOD KENEMORE, JR. caused a wire transfer of approximate1y $3000 'from account number 1330901 at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, in the name of ATG ASSOCIATION OF TRUST AND

GUARANTEE to personal bank account number 187-7-47545 at First Interstate Bank, Newport Beach, California in the name of SHERLYN DENICE KENEMORE and LAWRENCE D. KENEMORE, JR.

(6) On or about February 28, 1994 LAWERNCE DERWOOD KENEMORE, JR., CHRIS WAYNE KELLUM and CRYSTAL KELLUM, caused a wire transfer of approximately $1000 from account number 1330901 at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, in the name of ATG ASSOCIATION OF TRUST AND GUARANTEE to personal bank account number 1883702894 at Bank One, Dallas, Texas, in the name of CHRIS WAYNE KELLUM and CRYSTAL KELLUM.

(7) Between March, 1994 and October, 1994 LAWERNCE DERWOOD KENEMORE, JR. caused to be diverted from account number 1002000634 at the Arlington National Bank, Arlington, Texas in the name of "ATG ASSOCIATION, A TRUST" approximately $30,000 and transferred such funds in periodic increments to account number 1002000972 at the Arlington National Bank, Arlington, Texas in the

name"L.S.K.Consulting,ATrust."

(8) BetweenMarch,1994and October,.1994,SHERLYNDENICEKENEMORE causedapproximately$30,000tobetransferredfrom accountnumber1002000972attheArlingtonNational Bank,Arlington,Texasinthename"L.S.K.Consulting, ATrust"throughtheuseofchecksmadepayableto LarryKenemore,Jr.,inperiodicincrements.

(9) BetweenMarch,1994and October,1994,LAWERNCEDERWOODKENEMORE, JR.depositedapproximately$30,000inperiodic incrementsintoapersonalaccountnumber1492072077 atBankOne,Texas,N.A.,Arlington,Texas:nthename ofLAWRENCED.KENEMORE,JR.andSHERLYN DENICEKENEMORE.

**ADDITIONAL OVERT ACTS**

The Grand Jury realleges all the allegations in paragraph 5 of Count 1, and Counts 3 through 25 as additional overt acts.

In violation of Title 18 United States Code, Section 1956(h) (18 USC §§ 1956(a) (1) (A) (i), (a) (1) (B) (i), 1956 (a) (2) (A))

## COUNTS 3-5: MAIL FRAUD

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraphs 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. On or about the dates set out in each count below, in the Northern District of Texas and elsewhere, the defendants LAWERNCE DERWOOD KENEMORE, JR., aka Lawrence D. Kenemore, Jr., aka Larry Kenemore, SHERLYN DENICE KENEMORE, aka Sherry Kenemore and JOSEPH BRYAN KENEMORE aided and abetted by each other, for the purpose of executing and carrying out a scheme and artifice to defraud and to obtain money from employers by false and fraudulent pretenses, representations and promises; and attempting to do so, did knowingly and willfully cause mail matter, to wit, envelopes containing checks in the amounts as listed below in each count, to be delivered by mail according to the directions thereon to ATG Association of Trust & Guarantee, 1607 West Division Street Arlington, Texas 76012, from the

locations listed below in each count, each use of the mails constituting a separate count of this indictment:

| COUNT | DATE | SENDER & ADDRESS | AMOUNT OF CHECK |
|---|---|---|---|
| 3 | 12/9/93 | Gasoline Alley<br>25 Hour Towing<br>6644 W. Buckeye Rd.<br>Phoenix, Az. 85043 | $1256.45 |
| 4 | 1/6/94 | Agape Horticultural Services<br>2660 W. Baseline<br>Mesa, AZ 85202 | $2148.30 |
| 5 | 1/12/94 | Jomar Tree Service<br>1250 W. Rancho Dr.<br>Phoenix, AZ 85313 | $906.90 |

Each count in violation 0f Title 18, United States Code, Sections 1341 and 2.

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## COUNTS 6-8: MAIL FRAUD

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and of paragraph 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. On or about the dates set out in each count below, in the Northern District of Texas, the defendants LAWERNCE DERWOOD KENEMORE, JR. , aka Lawrence D. Kenemore, Jr. , aka Larry Kenemore, SHERLYN DENICE KENENORE, aka Sherry Kenemore, CHRIS WAYNE KELLUM and CRYSTAL KELLUM aided and abetted by each other, for the purpose of executing and carrying out the aforesaid scheme and artifice to defraud and to obtain money from employers by false and fraudulent pretenses, representations and promises, and attempting to do so, did knowingly and willfully cause mail matter, to wit, envelopes containing checks in the amounts as listed below, to be delivered by mail according to the directions thereon to ATG-Associations, 1607 West Division Street, Arlington, Texas 76012, from the locations listed in each count below, each such use of

the mails constituting a separate count of this Indictment:

| COUNT | DATE | SENDER & ADDRESS | AMOUNT OF CHECK |
|---|---|---|---|
| 6 | 5/2/94 | Crown Glass I Screen<br>228 5. Riverside Ave.<br>Raiatto, CA 92376 | $772.40 |
| 7 | 5/9/94 | Atlas Sand<br>& Gravel, Inc.<br>P.O. Box 249<br>Eden, GA 31307 | $691.40 |
| 8 | 6/6/94 | Scf Enterprises<br>31732-40 Devonshire<br>Chatsworth, CA 91411 | $1080.00 |

Each count in violation of Title 18, United States Code, Sections 1341 and 2.

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## COUNTS 9-11: MAIL FRAUD

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count I of this Indictment as if fully set forth herein.

2. On or about the dates set out in each count below, in the Northern District of Texas, the defendants LAWERNCE DERWOOD KENEMORE, JR., aka Lawrence D. Kenemore, Jr. aka Larry Kenemore, SHERLYN DENICE KENENORE, aka Sherry Kenemore, CHARLES B. POSTLE, aka Pat Postle, VERNON L. BYRD, aka Tack Byrd, aided and abetted by each other, for the purpose of executing and carrying out the aforesaid scheme and artifice to defraud and to obtain money from employers by false and fraudulent pretenses, representations and promises, and attempting to do so, did knowingly and willfully cause mail matter, to wit, envelopes containing checks in the amounts as listed below, to be delivered by mail according to the directions thereon to ATG-Associations, 1607 West Division Street, Arlington, Texas 76012, from the locations listed below in each count, each use of the mails constituting a separate

count of this indictment:

| COUNT | DATE | SENDER & ADDRESS | AMOUNT OF CHECK |
|---|---|---|---|
| 9 | 4/27/94 | Lonnie's Used Car<br>& Salvage Co.<br>4609 Pine Springs<br>Fayetteville, N.C. 28306 | $208.00 |
| 10 | 7/1/94 | Companion Care Group Inc.<br>1386-H Westgate Center Dr.<br>Winston-Salem, N. C 27103 | $363.00 |
| 11 | 7/1,194 | G.W. Enterprises<br>3099 Sunrise Blvd.<br>Rancho Cordova, CA 95670 | $455.36 |

Each count in violation of Title 18, United States Code, Sections 1341 and 2.

## COUNT 12: ERISA THEFT

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraphs 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. From in or about February, 1993 through in or about January, 1994, in the Northern District of Texas and elsewhere, LAWERNCE DERWOOD KENEMORE, JR., aka Lawrence 0. Kenemore, Jr., aka Larry Kenemore, SHERLYN DENICE KENEMORE, aka Sherry Kenemore and JOSEPH BRYAN KENEMORE, aided and abetted by each other and by others known and unknown to the Grand Jury, knowingly stole, embezzled and unlawfully and willfully abstracted and converted to their own use and the use of others, money, funds, premiums, credits and assets of employee welfare benefit plans subject to Title I of the Employee Retirement Income Security Act of 1974, and of funds connected therewith, that is, at least $320,000 from account number 207-64344 at Merrill Lynch, Newport Beach, California in the name of ATG ASSOCIATION OF TRUST AND GUARANTEE, and

from account number 1490051859 at Bank One, Texas, N.A., Dallas, Texas In the name or ATO ASSOCIATION OF TRUST AND GUARANTEE. -

In violation of Title 18, United States Code, Sections 664 and 2.

**COUNT 13: ERISA THEFT**

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraphs 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. From in or about December, 1993 through in and about January, 1995, in the Northern District of Texas and elsewhere, LAWERNCE DERWOOD KENEMORE, JR., aka Lawrence 0. Kenemore, Jr., aka Larry Kenemore, SHERLYN DENICE KENEMORE, aka Sherry Kenemore, CHRIS WAYNE KELLUM and CRYSTAL KELLUM, CHARLES E. POSTLE, aka Pat Postle, and VERNON L. BYRD, aka, Tack Byrd, aided and abetted by each other and others known and unknown to the Grand Jury, knowingly stole, embezzled and unlawfully and

willfully abstracted and converted to their own use and the use of others, money, funds, premiums, credits and assets or employee welfare benefit plans subject to Title I of the Employee Retirement Income Security Act of 1974, and of funds connected therewith, that is, at least $610,000 in money, funds, premiums and assets from account number 1490051859 at Bank One, Texas, N.A., Dallas, Texas, in the name of ATG ASSOCIATION OF TRUST AND GUARANTEE, and from an account number 1002000634 at the Arlington National Bank, Arlington, Texas in the name of ATG ASSOCIATION (A TRUST)

In violation of Title 18, United States Code, Sections 664 and 2.

## COUNT 14: ERISA THEFT

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraphs 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. On or about May 4, 1994, in the Dallas Division of the Northern District of Texas and elsewhere, CHRIS WAYNE KELLUM and CRYSTAL KELLUM, aided and abetted by each other, did embezzle, steal and unlawfully and willfully abstract and convert to their own use and the use of others, the money, funds, premiums, credits and assets of employee welfare benefit plans subject to Title I of the Employee Retirement Income Security Act of 1974, and of funds connected therewith, that is, approximately $6000.00 in money, funds and assets of account number 1170003832 In the name of 'the "National Employees Trade Alliance Trust" located at Bank One, Texas, NA., Dallas, Texas.

In violation of Title 18, United States Code, Sections 664 and 2.

## COUNT 15: FALSE STATEMENTS TO DEPARTMENT OF LABOR

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraph 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. On or about January 24, 1994, in the Northern District of Texas, in a matter within the jurisdiction of the United States' Department of Labor, which was a department and agency of the United States, defendant, CHRIS WAYNE KELLUM knowingly and willfully made and caused to be made a false and fictitious material statement and representation in that defendant CHRIS WAYNE KELLUM, caused to be filed with the United States Department of Labor, a Labor Organization Information Report: Form LM-1 which reported the creation off the NATIONAL EMPLOYEES TRADE ALLIANCE and falsely represented that such document was signed by Tom Walsh as president when in truth and in tact, as CHRIS WAYNE KELLUM well knew, Tom Walsh never signed the form LM-1 and was never the

president of such alleged "labor organization."

In violation of Title 18 United States Code, Section 1001.

## COUNTS 16-19: MONEY LAUNDERING

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraphs 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. On or about the dates listed in each count below in the Northern District of Texas and elsewhere defendants LAWERNCE DERWOOD KENEMORE, JR., aka Lawrence D. Kenemore, Jr. aka Larry Kenemore and SHERLYN DENICE KENEMORE aka Sherry Kenemore, aided and abetted by the defendants as listed in each count below, and aided and abetted by each other and by others known and unknown to the grand jury, having previously transferred funds from accounts located in financial institutions in the United States to an account at the Swiss American National Bank of Antigua, St. John's, Antigua, West Indies, did knowingly and willfully transport, transmit and transfer and attempt to transport, transmit and transfer funds in the amounts listed in each count below, from and through the Swiss American National Bank of Antigua, St. John's,

Antigua, West Indies, a place outside the United States, to a place in the United States, as listed in each count below, with the intent to promote the carrying on of a specified unlawful activity to wit: mail fraud, said transfers being initiated and directed by instructions sent by facsimile transmission from the offices of ATG Association of Trust and Guarantee in Arlington, Texas to the Swiss American National Bank of Antigua, St. John's Antigua, West Indies, each such transmission and transfer of funds constituting a separate count of this indictment:

| Count | Date | Amount | Defendants & Receiving Account |
|---|---|---|---|
| 16 | 12/15/93 | $2,000 | JOSEPH BRYAN KENEMORE<br>Acot # 0579517<br>Stillwater National Bank<br>Tulsa, Oklahoma |
| 17 | 1/11/94 | $3,000 | SHERLYN DENICE KENEMORE<br>LAWERNCE DERWOOD KENEWOOD<br>Acct # 187-7-47545<br>First Interstate Bank<br>Newport Beach, Calif. |
| 18 | 1/20/94 | $3,000 | SHERLYN DENICE KENEMORE<br>LAWERNCE DERWOOD KENEMORE<br>Acct # 187—7—47545<br>First Interstate Bank |

| | | | |
|---|---|---|---|
| | | | Newport Beach, Calif. |
| 19 | 2/8/94 | $1,000 | CHRIS WAYNE KELLUM<br>CRYSTAL KELLUM<br>Accr # 1883702894<br>Bank One, Texas N.A.<br>Dallas, Texas |

Each count in violation of Title 18, United States Code, Sections 1956 (a) (2) (A) and 2.

**COUNT 20-24: MONEY LAUNDERING**

1. The Grand Jury realleges and incorporates the Introduction and paragraphs 1-5 of Count 1 and paragraphs 1-4 of Count 2 of this Indictment as if fully set forth herein.

2. On or about the dates listed in each count below in the Northern District of Texas and elsewhere the defendants LAWERNCE DERWOOD KENEMORE and SHERLYN DENICE KENEMORE, aided and abetted by each other and by others known and unknown to the grand jury, did knowingly and willfully conduct and attempt to conduct financial transactions, to wit: the transfer of funds from Arlington National Bank, Arlington, Texas, a financial institution the activities of which affected interstate commerce, by the use of checks drawn on Arlington National Bank account number 1002000072 in the name of "L. S K. Consulting, A Trust" and made payable to the entities and in the amounts as listed in each count below, with the knowledge that the property used in these financial transactions represented the proceeds of some form of unlawful activity, and which in fact

represented the proceeds of a specified unlawful activity, to wit: mail fraud with the intent to promote the carrying on of such specified unlawful activity and to conceal and disguise the nature, source, location, ownership, and control of the proceeds of the specified unlawful activity, each transaction constituting a separate count of the indictment:

| Count | Date | Check | Amount | Payee |
|---|---|---|---|---|
| 20 | 5/11/94 | 10004 | $1500.00 | Larry Kenemore, Jr. |
| 21 | 6/15/94 | 10010 | $1500.00 | Larry Kenemore, Jr. |
| 22 | 8/9/94 | 10021 | $2200.00 | Larry Kenemore, Jr. |
| 23 | 8/19/94 | 10025 | $1000.00 | Larry Kenemore, Jr. |
| 24 | 8/19/94 | 10026 | $500.00 | "Oceanus" |

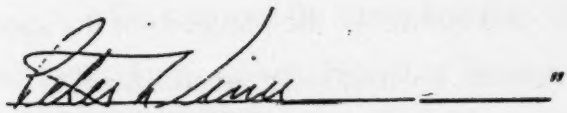
Each count in violation of Title 18, United States Code, Sections 1956 (a) (1) (A) (i) , (a) (1) (B) (i) and 2.

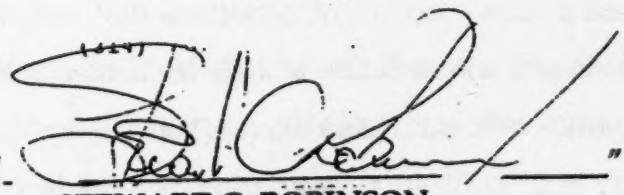
A TRUE BILL

"S/ _____ "

FOREPERSON

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## APPENDIX - 10

**Section 2, Clause 3. Criminal Trial by Jury**

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when nor committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

## APPENDIX - 11

**Rule 18. Place of Prosecution and Trial**

Except as otherwise permitted by statute or by these rules, the prosecution shall le had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice. (As amended Feb. 28, 1966, eff. July ], 1966; Apr. 30, 1979, eff. Aug. 1, 1979)